IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. CIVIL SECOND APPEAL NO.213/2001

SMT. SWAROOP DEVI & ANOTHER
…DEFENDANTS-APPELLANTS
VERSUS
MURTI BHAGWAN SATYA NARAINJI
TEMPLE OF SATYA NARAINJI, PURANI TONK, TONK
...PLAINTIFF-RESPONDENT

DATE OF JUDGMENT :::: 1st October, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri N.K. Maloo, Counsel for defendant-appellants
Shri B.L. Mandhana, Counsel for plaintiff-respondent
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//Reportable//

By the Court:-

Heard learned counsel for both the parties.

This second appeal on behalf of the defendant-tenant, under Section 100 of the Code of Civil Procedure, arises out of a suit for eviction and arrears of rent filed by the plaintiff-respondent against the defendant-appellant, which has been decreed by both the courts below on the ground of denial of title as well as tenancy of plaintiff by the defendant.

Briefly stated the relevant facts of the case are as under -

The plaintiff filed a suit for eviction, in respect of rented premise, in the trial court, on 29.1.1980

wherein it was pleaded that the defendant took the suit premise, the description of which is mentioned in Para 1 of the plaint, from one Saubhagmal adopted son of Nathulal, on monthly rent of Rs.8/- and executed a rent-note dated 12th July, 1978 (Exhibit-1) in favour of Saubhagmal. Shri Saubhagmal gifted the said property to the plaintiff through registered gift-deed dated 26th November, 1979 (Exhibit-2). The defendant has not paid the monthly rent of the rented premise since January, 1979, therefore, the defendant is a defaulter and thus liable to be evicted therefrom. Shri Saubhagmal also gave a right to the plaintiff to recover the due rent from the defendant, therefore, the plaintiff is entitled to recover a sum of Rs.96/- for 12 months for the period from 1.1.1979 to 31.12.1979. It was also pleaded that tenant has also willfully caused substantial damage to the rented premise. It was further pleaded that there is a bona-fide requirement of the rented premise to plaintiff.

The defendant filed his written-statement, on 19.5.1980 wherein he denied the contents of the plaint and pleaded that he never executed any rent-note in favour of Saubhagmal nor he took the disputed property on rent from him. He never remained tenant of Saubhagmal. Shri Saubhagmal has no connection whatsoever with the disputed house and the owner thereof is Mst. Gopi W/o

Mohanlal, who had mortgaged the disputed property with the defendant about 8 to 10 years ago, and, as such, the defendant is in possession of the disputed property. It was also pleaded that the defendant is not the tenant of any person in the disputed property.

The plaintiff filed an application in the trial court on 25th July, 1980 stating therein that the defendant, in his written-statement, has denied the title and tenancy of the plaintiff as well as Saubhagmal, therefore, he has denied the title of landlord, therefore he is liable to be evicted on this ground also, and prayed for inclusion of this ground of eviction also in the suit and to frame an issue on it also. A copy of application was served upon the learned counsel for the defendant and the case was fixed for reply and arguments on application on 21st August, 1980. The defendant did not file any reply to the said application. The trial court, on the basis of pleadings of the parties and application, framed four issues on 21st August, 1980. Issue No.1 was – as to whether the defendant took the disputed house on monthly rent of Rs.8/- from Saubhagmal and executed a rent-note-agreement dated 12th July 1978. Issue No.2 was – as to whether the defendant is a tenant in the disputed house of the plaintiff. Issue No.3 was – as to whether the defendant has denied the title and tenancy of

landlord and he is liable to be evicted. Issue No.4 was relating to relief.

In support of their contentions, both the parties led oral and documentary evidence and, after hearing both the parties and examining the record of the case, the trial court, vide its judgment dated 5th March, 1990, decided all the issues in favour of the plaintiff and against defendant, and consequently decreed the suit for eviction against the defendant from the disputed house.

Being aggrieved with the same, an appeal was preferred by the defendant. The first appellate court, vide its judgment and decree dated 7th March, 2001, affirmed the finding of the trial court on all the issues and dismissed the appeal of the defendant. Hence, the defendant-appellant preferred this second appeal before this Court on 27th March, 2001.

During the pendency of this appeal, the learned counsel for the appellant filed two applications, one under Order 41 Rule 27 of the CPC contending therein that during the pendency of the second appeal the appellant no.2, who is son of appellant no.1, has purchased the house of which the disputed property is a part, vide registered sale-deed dated 7th May 2001, from Smt. Gopi Bai. A certified Photostat copy of the registered sale-deed dated 7th May 2001 has been annexed with the application and it has been prayed that it may be taken

on the record. The another application is to direct the respondent to produce the registered document executed by Smt. Sunder Bai in favour of PW-2 Saubhagmal as stated by Saubhagmal in his statement. Both the applications are pending, which are also being disposed of by this order.

The learned counsel for the appellant Shri N.K. Maloo contended that the disputed house was belonging to one Smt. Sunder Bai W/o Nathulal, who executed a registered 'will' dated 28th December 1967 (Exhibit D-1) in favour of Smt. Gopi Bai Daughter of Kesarlal, who mortgaged the disputed house with the defendant and, as such, defendant is in occupation of the disputed house. The defendant never executed rent-note-agreement dated 12th July 1978 in favour of Saubhagmal. He further argued that, during the pendency of this second appeal, the appellant No.2 S/o Banne Singh has purchased the disputed property through registered sale-deed dated 7th May 2001 from Smt. Gopi Bai, therefore, he has now become absolute owner of the property, in dispute. He has filed a copy of sale-deed in this Court with application under Order 41 Rule 27 of the CPC.

The learned counsel for the appellants also argued that it was a duty of the plaintiff to plead and prove that there was existence of relationship of landlord and tenant in between the plaintiff and the defendant. The plaintiff could not prove that after execution of the

registered gift-deed dated 26th November 1979 by Saubhagmal in favour of the plaintiff, any notice was given by Saubhagmal or plaintiff to the defendant or any rent was paid by the defendant to Saubhagmal or plaintiff or any attornment was made. He, therefore, contended that when relationship of landlord and tenant itself is not established in between plaintiff and defendant then the denial of title or tenancy of plaintiff by defendant in written-statement or by way of execution of sale-deed dated 7.5.2001 by Smt. Gopi Bai in favour of defendant are of no consequences. They can be construed as denial of title or tenancy provided it is established that relationship of landlord and tenant is first established, which is not established in the present case in view of his submissions, as mentioned above.

Learned counsel for the appellants, in support of his contentions, cited following judicial pronouncements:-

1. S. Thangappan v. P. Padmavathy - 1999 (7) SCC 474.

2. J.J. Lal Private Limited and Others Vs. M.R. Murali and Another - 2000 (3) SCC 98.

3. Mirkhan Nathekhan Vs. Kutab Ali - 1979 (1) RCR 508.

4. Shiv Narain Vs. Bal Kishan - 1979 (1) RCR 626.

5. Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another - AIR 1965 SC 1923.

Learned counsel for the respondent, Shri B.L. Mandhana, contended that the present suit was a simple suit for eviction of defendant from the rented premise filed by the plaintiff based on rent-note-agreement dated 12th July 1978 (Exhibit-1) as well as gift-deed dated 26.11.1979 (Exhibit-2) and, while deciding Issues No.1 and 2, both the courts below have recorded a finding that the execution and contents of Exhibit 1 and Exhibit-2 are proved and defendant is a tenant of plaintiff and, this being a question of fact, the finding of fact recorded by both the courts below in this regard cannot be questioned by the appellants. He further contended that the suit for eviction was filed on 28th January 1980 and written-statement was filed on 19th May 1980. The defendant pleaded that Mst. Gopi Bai mortgaged the disputed property with him about 8 to 10 years ago. As per the case of the defendant, the property was belonging to Sunder Bai and she executed a ‘will’ dated 28th December 1967. The said will has been exhibited in the case but no witness of will has been examined, hence the contents of will are not proved in the case. The defendant neither proved will of Sunder Bai nor proved as to when Sunder Bai died and Gopi Bai became the owner on the basis of registered ‘will’ dated 28th December 1967; he contended

that when Gopi Bai was not the owner in the year 1970 then she was not competent to mortgage the disputed property with the defendant in the year 1970. The date, month or the year of the mortgage has not been mentioned in the written-statement. However, DW-1 Banne Singh has stated in his statement that the disputed property was mortgaged with him in the year 1970. He, therefore, contended that in absence of any specific date of death of Sunder Bai on the record it couldn’t be presumed that Gopi Bai became owner and she mortgaged the disputed property with the defendant. He further contended that in absence of alleged mortgage in favour of defendant in writing and its registration also, as it was in respect of immovable property, it couldn’t be presumed that the contention of the defendant in this regard is correct.

He also contended that so far as arguments of learned counsel for the appellant, that after execution of registered gift-deed dated 26th November 1979 no notice was given to defendant, is concerned, he referred to the statement of defendant Banne Singh DW-1, wherein he admitted that he received a notice from Saubhagmal. He also referred the rent-note-agreement (Exhibit-1), which is annexed with a stamp of Rs.3/- purchased on 12th July 1978 by defendant Banne Singh. It bears the signature of defendant Banne Singh and it is annexed with rent-note-agreement (Exhibit-1), which is also signed by the

defendant Banne Singh. He contended that during cross-examination PW-2 Saubhagmal specifically denied this fact that this stamp of Rs.3/- (Exhibit-1) was brought by Banne Singh for Gopi Bai, therefore, it is clear that this stamp of Rs.3/- (Exhibit-1) was purchased and brought by defendant on 12th July 1978 for execution of rent-note-agreement. He also contended that the defendant Banne Singh, in his examination-in-chief, did not deny specifically about execution of Exhibit-1 rent-note-agreement. He also contended that although the execution of Exhibit-1 rent-note-agreement is found to be genuine and proved by both the courts below, but still the learned counsel for the appellant is arguing it in second appeal that the said document is forged one, whereas the defendant did not take a specific plea in the written-statement that Exhibit-1 is a forged document. He also contended that, in fact, the defendant is in habit of manipulation of the facts and documents. The defendant came with a case that Gopi Bai mortgaged the property with him in the year 1970, but no mortgaged-deed has been placed on the record. He also contended that the suit was filed on 28th January 1980; the judgment of the trial court was passed on 5th March 1990; the judgment of the first appellate court was passed on 7th March 2001 and the second appeal, before this Court, was filed on 27th March 2001, and even thereafter by manipulating the facts and

things, the appellant No.2 got one sale-deed executed on 7th May 2001 from Gopi Bai who had no authority to execute the same.

The learned counsel for the respondent, Shri B.L. Mandhana, also contended that the alleged sale-deed dated 7th May 2001 has been drafted by none else but a person who was the counsel for the defendant in the first appeal, therefore, this sale-deed is a creative, manipulative and fabricated document and it is neither proved nor exhibited in evidence, and, looking to all the facts and circumstances of the case, the application filed by the appellants under Order 41 Rule 27 of the CPC to take the said sale-deed on the record is also liable to be dismissed. He also contended that another application to direct the production of plaintiff's witness's document by plaintiff/respondent is also liable to be dismissed being frivolous and not maintainable.

So far as existence of relationship of landlord and tenant in between the plaintiff and defendant is concerned, the learned counsel for the plaintiff-respondent contended that soon after execution of registered gift-deed dated 26th November 1979 (Exhibit-2), the title of assignee was complete and the attornment was automatic and in this connection he relied upon the decision of this Court in – Ram Saran Sharma Vs. Smt. Kamla Acharya – 2001 (2) RLR 136. He also contended that

all the three Issues are relating to question of facts and there is concurrent finding of facts by both the courts below, which cannot be interfered with by this Court in second appeal under Section 100 of the Code of Civil Procedure. He further contended that no substantial question of law is involved in this second appeal and, after amendment made in the Code of Civil Procedure in the year 1976, a second appeal can only be admitted on a substantial question of law and since no substantial question of law is involved in this second appeal, it is liable to be dismissed summarily.

I have heard the learned counsel for both the parties and examined the judgment as well as the record of both the courts below.

Before examining the merits of the case, I would first like to refer the judicial pronouncements referred by learned counsel for the parties in support of their contentions, which are as under –

In S. Thangappan Vs. P. Padmavathy – (1999) 7 SCC 474, the Hon'ble Apex Court considered the provisions of Section 116 of the Evidence Act with reference to denial of title by tenant of an immovable property of landlord and held as under: -

> "14. This section puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the

title of his landlord at the beginning of his tenancy. The significant words under it are “at the beginning of the tenancy”. This is indicative of the sphere of the operation of this section. So a tenant once inducted as a tenant by a landlord, later he cannot deny his landlord’s title. Thus, this principle of estoppel debars a tenant from denying the title of his landlord from the beginning of his tenancy. However defective the title of such landlord could (sic may) be, such tenant cannot deny his title. But subsequent to his induction as tenant if the landlord loses his title under any law or agreement and there is a threat to such tenant of his eviction by subsequently acquired paramount title-holder then any denial of title by such tenant to the landlord who inducted him into the tenancy will not be covered by this principle of estoppel under this section. In Mangat Ram Vs. Sardar Meharban Singh (1987) 4 SCC 319 this Court held: (SCC p.327, Para 11)

“The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor had since come to an end.” (Emphasis supplied)

15. Similarly in D. Satyanarayana v. P. Jagadish (1987) 4 SCC 424 also this Court holds in Para 4: (SCC p.428)

“4. The rule of estoppel embodied under Section 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlords title, however defective it may be,.... Similarly, the estoppel under Section 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy.” (Emphasis supplied).

In J.J. Lal Private Limited & Others Vs. M.R. Murali and Another – (2002) 3 SCC 98, the Hon'ble Supreme Court held as under:-

> "18. What amounts to denial of title, and whether such denial is bona fide or not, are the questions to be determined in the facts and circumstances of each case. As a general rule the vulnerability of denial of title by the tenant shall be tested by reference to the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord. However, the rule of estoppel contained in Section 116 of the Evidence Act is not exhaustive. To operate against the tenant as providing a ground for eviction under Section 10 of the Act, a mere denial of the title of the landlord is not enough; such denial has to be "not bona fide". "Not bona fide" would mean absence of good faith or non-genuineness of the tenant's plea. If denial of title by the tenant is an outcome of good faith or honesty or sincerity, and is intended only to project the facts without any intention of causing any harm to the landlord it may not be "not bona fide". Therefore to answer the question whether an assertion of denial of the landlord's title by the tenant was bona fide or not, all the surrounding circumstances under which the assertion was made shall have to be seen. The counter highlights the factum and contents of notice by the Municipal Corporation served on the tenant, reproduced in the earlier part of this judgment and the reaction of the tenants

to the threat coupled with temptation held out by the Corporation. This notice by the Municipal Corporation states the tenants having informed the Municipal Corporation that they were in possession of the premises; that they had agreed to pay to the Corporation the lease amount which was presumably in arrears on account of non-payment by their landlords (i.e. the respondents); that the Municipal Corporation threatened the tenancy premises being subjected to public auction if the arrears were not cleared. This notice is by reference to the letter dated 26.3.1993 sent by the tenants to the Municipal Corporation which is not available on record. The landlords on whom lay the burden of proving availability of the ground of eviction took no steps for the production of this letter. The contents of the letter would have provided vital evidence relating to the nature and manner of denial of title by the tenants and the bona fides of denial could have been inferred. The High Court in its judgment has made a reference to “a series of attempts to deprive the landlords of their lawful rights” by the tenants. The High Court appears to have taken into consideration some other documents referable to some other litigation between the parties which documents, in our opinion, could not have been taken into consideration unless tendered in evidence and brought on record consistently with procedural law governing trial of civil cases. There is yet another error committed by the High Court. So far as the additional counter and contents of the notice by the Municipal Corporation to the tenants are concerned we do not think that a case of denial of title is made out. In any case it cannot be considered to be “not bona fide”. The tenants have stated that the ultimate owners of the property were the Municipal Corporation and they had agreed their willingness to pay rent to the Municipal Corporation under threat of eviction solely for the purpose of protecting their own possession over the premises. They have neither disowned the

title of their own landlords at the inception of the tenancy nor have set up any title in themselves nor attorned in favour of the Municipal Corporation by voluntarily entering into direct tenancy with the Municipal Corporation bypassing their own landlords. We are therefore clearly of the opinion that no case of eviction on the ground of tenants' denial of landlords' title being "not bona fide" is made out.

19. For several reasons, we are of the opinion that a decree on the ground of denial of the landlord's title by the tenant and such denial being not bona fide could not have been a ground for directing eviction of the tenants in the present case. Firstly, the application for eviction filed by the landlords do not plead such a cause of action, setting out material facts and as providing a ground for relief of eviction. The plea taken by the defendant-tenants in their additional counter does not by itself amount to denial of title so as to render them vulnerable to eviction by attracting applicability of Section 10(2)(vii) of the Act. The basic question was whether the landlords themselves treated the plea taken by the tenants in their additional counter as denial of their title and if that be so, the landlords should have amended their application for eviction incorporating the averment that the said additional counter amounted to denial of title of the landlords and such denial was not bona fide. Thereupon the tenants would have had an opportunity of explaining the facts and circumstances in which the additional counter, along with the pleas raised therein, came to be filed and if that amounted to denial of landlords' title then how did they propose to justify such denial as bona fide. Such pleas could have been the subject-matter of trial and evidence adduced by the parties followed by expression of opinion by the Controller as to whether a ground for eviction was made out or not. Before the Controller none of the parties were alive to the fact

> that alleged denial of title by the tenants could possibly be clicked by the landlords as a ground for eviction. The Appellate Authority for the first time formulated a point at issue touching this ground during the course of its decision and yet held in favour of the tenants holding that such denial was bona fide. If at all the Appellate Authority was inclined to frame an issue then it ought to have been tried on the lines laid down in Order 41 Rule 25 of the Code of Civil Procedure. The High Court, as already stated, shifted the emphasis and treated the denial of title by the tenants as primary ground for eviction and proceeded to decide the same. Thus what was not in issue before the trial court at all became the core issue on which the High Court has founded its decision. This is not only violative of the established procedure for civil trials but also violative of the principles of justice and fair play. The tenants have been certainly prejudiced in their defence and, therefore, availability of that ground for eviction of the tenants in the present proceedings cannot be sustained."

The learned counsel for the appellant, in support of his contentions, placed a strong reliance on the above judgment of the Hon'ble Supreme Court in J.J. Lal Private Limited & Others Vs. M.R. Murali and Another – (2002) 3 SCC 98, that without making an amendment in the plaint by adding ground of denial of title and tenancy of plaintiff by defendant on the basis of pleading in the written-statement, no decree could have been passed on the ground of denial of title and tenancy and further that even if denial of title and tenancy is found to be proved the same was not bona-fide and, as such, the decree of

eviction should not have been passed in the case. The Hon'ble Supreme Court in Para No.18 has observed that what amounts to denial of title is a question to be determined in the facts and circumstances of each case. The facts of the case for consideration before the Hon'ble Supreme Court in J.J. Lal Private Limited's case (Supra) were that suit premises were owned by Municipal Corporation of Chennai, and held by the landlords as allottee of the Municipal Corporation. The landlords further leased out the premises to the tenants (appellants before the Apex Court). Thus, there were three persons associated with the suit premises – first the Municipal Corporation, second their allottees (i.e. the respondents before the Apex Court) and third lessees inducted by the allottees i.e. the appellants before the Apex Court. The tenants in that case, in the additional counter, contended that the tenants had reliably learnt, on making enquiries from the Municipal Corporation of Madras, that long-term lease was granted by the Corporation in favour of late M.B. Ramachandra Naidu, who expired in the month of March 1982. With his death, the lease came to an end. Even the term of lease by the Municipal Corporation in favour of the landlords had expired and the Corporation had taken steps to create a lease directly in favour of the actual occupants and the respondents had agreed to pay the rent to the Municipal

Corporation w.e.f. 1.4.1982 and onwards. The issue regarding denial of title was not framed nor the decree of eviction was passed by the Controller on the ground of denial of title. The appellate authority, for the first time, framed the point for decision as to whether the tenants were liable to be evicted due to their denial of appellants' right over the property. However, the appellate authority, after considering the ground of eviction as enumerated in Section 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, concluded that the denial of title of the landlord by the tenants was not bona-fide and dismissed the appeal filed by the landlord and confirmed the judgment of the Controller. The landlords preferred civil revision in the High Court and the High Court reversed the judgment of the Controller and the appellate authority, and passed a decree of eviction on the ground that denial of title of landlords by tenants was not bona-fide. The Hon'ble Supreme Court considered the catena of judgments on the point that in case defendant denies the title of the landlord in the written statement then a decree of eviction can be passed on that basis. In J.J. Lal Private Limited's case (supra) the Hon'ble Supreme Court considered its own decision in Majati Subbarao v. P.V.K. Krishna Rao (1989) 4 SCC 732, wherein the Supreme Court answered the contention of learned counsel for the tenant

that the landlord had failed to apply for amendment of his plaint and incorporate the ground of denial of title therein, and held -

> “We agree that normally this would have been so but, in the present case, we find that the trial court, namely, the Rent Controller, framed an issue as to whether the tenant’s denial of the landlord’s title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction petition that the appellant had denied the title of the respondent and that the denial of title was bona fide. If he had done that the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that contention at that stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition.”

The Hon’ble Apex Court in J.J. Lal Private Limited’s case (Supra) also considered its decision in Om Prakash Gupta v. Ranbir B. Goyal {(2002) 2 SCC 256} and Firm Sriniwas Ram Kumar v. Mahabir Prasad (AIR 1951 SC 177), Hasmat Rai v. Raghunath Prasad {(1981) 3 SCC 103} and Om Prakash v. Ram Kumar {(1991) 1 SCC 441}, and held as under:-

> “17. A plea taken by the defendant in the written statement can itself be made a ground for allowing relief to the plaintiff subject to well-known limitations. The plea taken in the written

> statement should by itself be enough as furnishing a ground for relief to the plaintiff, the plea taken by the defendant does not stand in need of any further pleadings being joined by the party; an issue is framed and put to trial unless the facts of the case show that the parties actually went to trial fully alive to the real issue between them and had an opportunity of adducing evidence, that is, to put it in other words, the parties know that the plea taken in the written statement too was the subject-matter of trial and could form the basis for relief to the plaintiff. In such case, though the pleadings may be lacking or there may be a failure to frame an issue or a specific issue, the applicability of the law laid down by this Court in Nagubai Ammal v. B. Shama Rao (AIR 1956 SC 593).”

The above extract of the judgment in J.J. Lal Private Limited’s case (Supra) shows that the Hon’ble Apex Court held that the plea taken by the defendant in the written-statement itself can be a ground of eviction of the defendant subject to well-known limitations. Therefore, this judgment does not help the present appellants in any manner whatsoever. The Hon’ble Apex Court, in J.J. Lal Private Limited’s case (Supra), in the peculiar facts and circumstances of that particular case, observed that the landlords should have amended their application for eviction incorporating therein the averments that the said additional counter amounted to denial of title of the landlords and such denial was not bona-fide.

The Hon’ble Apex Court assigned the reasons for above observations that in that case none of the parties before the Controller were alive to the fact that alleged denial of title by the tenants could possibly be clicked by the landlords as a ground for eviction. The Appellate Authority for the first time formulated a point at issue touching this ground during the course of its decision, therefore, the Hon’ble Apex Court observed that in case the application for eviction could have been amended then tenants would have had an opportunity of explaining the facts and circumstances in which the additional counter, along with pleas raised therein, came to be filed and if that amounted to denial of landlord’s title then how they proposed to justify such denial as bona fide.

So far as present case is concerned, it is clear that the tenant-defendant-appellant filed his written-statement in the trial court on 19th May 1980 wherein he denied the title and tenancy of Saubhagmal as well as landlord-plaintiff-respondent and thereafter the landlord-plaintiff-respondent filed an application in writing on 25th July 1980 contending therein that the defendant in his written-statement has denied the title and tenancy of plaintiff as well as Saubhagmal, and denial of title and tenancy is one of the grounds of eviction, therefore, this ground may also be included in the grounds of eviction and an issue may also be framed

in this regard. The tenant-defendant-appellant did not file any reply to the above application filed by the landlord. The trial court, vide its order dated 21st August 1980 framed four Issues including Issue No.3 relating to denial of title and tenancy of the plaintiff by the defendant.

The Hon'ble Apex Court in Majati Subbarao's case (Supra), which was considered in J.J. Lal Private Limited's case (Supra), observed that the Rent Controller framed an issue as to whether the tenant's denial of the landlord's title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction petition and the appellant had denied the title of the respondent and that the denial of title was bona fide. If he had done that, the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that contention at that stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition.

In these circumstances, the observation made in J.J. Lal Private Limited's case (Supra) about amendment

of the application for eviction is not applicable in the peculiar facts and circumstances of the present case and the principles laid down by the Hon'ble Apex Court in Majati Subbarao's (Supra) are fully applicable. As, in the present case, Issue No.3 regarding denial of title and tenancy was framed on 21.8.1980 in the presence of counsel for defendant-tenant and no objection was raised by him that in absence of specific plea the Issue should not be framed. Had this objection been taken by him at that stage, the plaintiff could have amended its suit by incorporating necessary pleadings in this regard. It is also clear that the application in writing was filed by the landlord in the present case on 25.7.1980 to frame an Issue in respect of denial of title in view of denial by the defendant-tenant of title and tenancy of the plaintiff, in his written-statement. The application was not even contested as no reply was filed by the defendant to this application.

The another contention of the learned counsel for the appellant, which is based on the decision of Hon’ble the Supreme Court in J.J. Lal Private Limited’s case (Supra) that denial of title of landlord should be “bona-fide”, is also not tenable in the facts and circumstances of the present case. The Hon’ble Apex Court in J.J. Lal Private Limited’s case (Supra) was considering the ground of eviction as mentioned in clause (vii) of sub-section (2) of Section 10 of the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960, whereas the present case relates to Section 13(1)(f) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which does not find the word ‘bona fide’. Section 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, which has been reproduced in Para 9 of J.J. Lal Private Limited’s case (Supra), reads as under :-

> “10. Eviction of tenants.-
> ...
>
> (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied -
> ...
>
> (vii) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:
>
> **Provided** that in any case falling under clause (i) if the Controller is satisfied that the tenant’s default to pay or tender rent was not willful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.”

For ready reference, Section 13(1)(f) of the Act of 1950 is also reproduced as under :-

> “13. Eviction of tenants:- (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, make any order, in favour of landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore to the full extend allowable by this Act, unless it is satisfied –
> ……
>
> (f) that the tenant has renounced his character as such or denied the title of the landlord and the landlord and the latter has not waived his right or condoned the conduct of the tenant; or”

The provisions of the aforesaid Acts applicable in the State of Tamil Nadu and Rajasthan, enumerating the grounds of eviction of tenants, are altogether different and the language thereof cannot be said to be pari-meteria, therefore, I do not find any force in the contention of the learned counsel for the appellants in this regard also.

In Mirkhan Nathekhan Vs. Kutab Ali Tayab Ali – 1979 (1) R.C. 508, a Division Bench of the M.P. High Court held as under:-

> “8. It is now settled law that the doctrine of estoppel under Section 106 of the Evidence Act applies where the tenant has been let into possession by the landlord. But where the landlord himself did not induct the tenant into property but claims his position under a derivative title, such as assignee, donee, lessee, heir etc. here is no estoppel against tenant. So a tenant already in possession is entitled to show that the plaintiff does not possess the derivative title he claims, but it is in some other person.

> The Privy Council in Krishna Prasad v. B.C. Cancern, AIR 1937 P.C. 251, has held:
>
> "The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e.g., by attornment, acceptance of rent etc."
>
> In the present case, it has been found that the transfer in favour of the plaintiff was bogus and sham and no title passed, the defendant neither attorned the tenancy nor paid any rent. Therefore, the defendant was entitled to challenge the derivative title of the plaintiff. For challenging plaintiff derivative title the defendant does not come within the mischief of Section 12 (1) (c) of the Act. It has been held by a Division Bench of this Court in Pandit Ramjilal v. Vijai Kumar - 1970 Rent Control Reporter 116 : 1970 MPLJ 50, that finally the contention that the defendant No.4 denies the title of his landlord is a principle which applies only to a suit brought by the landlord against his tenant whom he had inducted in possession of the demised premises. It is of no avail to the tenant when the real owner of those premises brings a suit for possession against the landlord as well as his tenant. Therefore, the Additional District Judge was justified in holding that the plaintiff cannot be evicted under Section 12 (1) (c) for denying the derivative title of the plaintiff."

The facts in Mirkhan Nathekhan's case (Supra) were that one Maryambai, owner of the suit house, filed a suit for eviction against tenant twice, but both the times her suit was dismissed. The appeals so preferred were also dismissed. Later on, she executed a registered sale-deed

in favour of her nephew Kutab Ali - the plaintiff in the case, who was living with her and also looking after the business of her husband Fakhruddin, who was dead. The defendant-tenant, in his reply, pleaded that the sale-deed in favour of plaintiff Kutab Ali is not genuine and brought into existence for the purpose of evicting him from the suit house. Plaintiff Kutab Ali filed a suit for eviction on the ground of disclaimer of his title and bona-fide need for his residence. The trial court as well as the first appellate court, both, dismissed the suit by holding that the sale-deed in favour of the plaintiff is genuine, but it was brought about with mala-fide intention only for the purpose of filing the suit for eviction against the defendant and no effect can be given to it. Being aggrieved with the same, the tenant filed second appeal before the Single Bench of the M.P. High Court, and the learned Single Judge held that the question of oblique motive behind execution of sale-deed executed in favour of the plaintiff is wholly immaterial and, in view of the finding of courts below that sale-deed is genuine, came to a conclusion that disclaimer of title of the plaintiff in the case is proved and consequently passed a decree of eviction. Hence, the tenant filed letter-patent-appeal before the Division Bench of the M.P. High Court. The main question to be considered by the Division Bench was whether the learned

Single Judge was justified in reversing the findings of the courts below by interfering with the finding of facts. The Division Bench observed that the fact-finding-court, i.e. the appellate court, came to a conclusion that the sale-deed in favour of the plaintiff was bogus, sham and colourable document and brought into being with the purpose of evicting the defendant from the suit house. This was a finding of fact and was binding on the learned Single Judge in the second appeal. The Division Bench relied upon the decision of the Hon'ble Supreme Court in the case of Durga v. Jawahir Singh – 17?I.A. 122, wherein the Privy Council held that there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be. In another case of Wali Muhammad v. Muhammad Baksh – AIR 1930 P.C. 91, the Privy Council held 'nor does the fact that the finding of the first appellate court is based upon some documentary evidence make it any the less a finding of fact'. Further in D. Pattabhiramaswamy v. S. Hanymayya – AIR 1959 S.C. 57, the Hon'ble Supreme Court held that there is no jurisdiction to entertain the second appeal on the ground of erroneous finding of fact, however gross the error may seem to be. A judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate Court based upon an

appreciation of the relevant evidence. The Division Bench of M.P. High Court, in the case, considered the old Section 100 of the CPC, which has now been amended in 1976, and after its amendment a second appeal under Section 100 CPC is confined only to the cases wherein question of law is involved and such question must be a substantial one. The Division Bench of the M.P. High Court was of the view that the above referred finding about bogus and sham sale-deed was a finding of fact and thus the same could not have been interfered with by the learned Single Judge while dealing with second appeal under Section 100 CPC.

The facts of the present case are absolutely distinguishable from the facts of the case dealt with by the Division Bench of the M.P. High Court in Mirkhan Nathekhan's case (Supra). In case the ratio of the decision of the Division Bench of the M.P. High Court is applied in the present case then it does not help the appellants, but it goes against them for the obvious reason that in the present case both the courts below have found the rent-note-agreement dated 12.7.1978 executed by defendant as well as gift-deed dated 26.11.1979 executed by Saubhagmal in favour of the plaintiff, to be genuine and proved and, according to the Division Bench of the M.P. High Court, both the Issues i.e. Issues No.1 and 2 in the present case, are relating

to question of facts and there is concurrent finding of facts recorded by both the courts below in favour of the plaintiff-landlord and, according to the judgment of the Division Bench of the M.P. High Court, the said finding is not open to be interfered with in second appeal under Section 100 of the Code of Civil Procedure.

In Shiv Narain Vs. Bal Kishan – 1979 (1) R.C.R. 626, a Single Bench of this Court considered provisions of Section 111 (g) of the Transfer of Property Act with regard to Section 13 (1)(f) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, and held as under:-

> “11. In that case, the question involved was with regard to the construction of the Managing Agency Agreement and their Lordships of the Supreme Court held that the construction of the Managing Agency Agreement was not only one of law but also it was neither simple nor free from doubt, and, therefore the High Court was in error in refusing to grant the appellant a certificate under Article 133 (1)(a) that the appeal involved a substantial question of law. A question of law is substantial as between the parties if the decision turns one way or another on the particular view taken of the law. I may add here that the phrase ‘substantial question of law’ used in Section 100 C.P.C. should be given wider construction than what was attributed to it under Section 110 (old) of the C.P.C. The expression ‘substantial question of law’ has been used in proviso to Section 30(1) of the Workmen’s Compensation Act, 1923 and so also in Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act, 1950. The Allahabad High Court in Upper Ganges Electric Employees Union v. Upper Ganges

> Valley Electricity Supply Co. Ltd., and another – AIR 1956 All. 491, took the view that the phrase 'substantial question of law' in Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act, 1950 must not be given the same meaning as in Section 110 (old) C.P.C. In Jwali and others v. Babu Lal and another – AIR 1958 All. 564, while interpreting the phrase 'substantial question of law' as used in the first proviso to Sub.S.(1) of S.30 of the Workmen's Compensation Act, it was held that the phrase must be given a wider construction than what is attributed to it under S.110 (old) C.P.C., namely that it would not cover cases of applicability of well-settled principles of law to a particular set of facts. The Orissa High Court in Central Engineering Corporation v. Dorai Raj (AIR 1960 Orissa 39) held that for the purpose of S.30 of the Workmen's Compensation Act, 1923 should be construed to cover even a case in which the commissioner has clearly misdirected himself on question of law. In my opinion, whether the averments made in Para 2 of the Additional pleas of the written-statement amount to a denial of the title of the landlord within the meaning of Section 13 (1)(f) of the Act is debatable and is not free from difficulty. In view of the authorities cited at the bar, the question arising in this appeal, appears to me to be a substantial question of law. The construction of the averments made in Para 2 of the additional pleas of the written statement Ex.7 undoubtedly raises a substantial question of law and for the aforesaid reasons, the contention of the learned counsel for the plaintiff that the finding of the lower appellate court that the appellant has denied the title of the landlord is a pure question of fact is devoid of force. Bhura's case (AIR 1976 Ra 249) is of no avail to the respondent."

In Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur and Another – AIR 1965 SC 1923, the Hon'ble Apex Court held that the principles embodied in Section

111 (g) of the T.P. Act are equally applicable to tenancies to which the T.P. Act does not apply, because they are in consonance with justice, equity and good conscience.

In Ram Saran Sharma Vs. Smt. Kamla Acharya - 2001 (2) RLR 136, this Court held that Section 109 of the Transfer of Property Act does not require service of notice on tenant, on alienation of property, to create relationship of landlord and tenant between transferee landlord and existing tenant. Once title of assignee is complete, the attornment is automatic and not dependent on tenant's attorning or agreeing to the attornment. This court held as under:-

> "17. As regards the law of attornment, envisaged under Section 109 of the Act of 1882, it is held that Section 109 of the said Act does not require service of notice on the tenant, on alienation of property, to create relationship of landlord and tenant between the transferee landlord and the existing tenant. The transferee of the lessor steps into the shoes and possess all the rights, which the transferor has and the attornment is not a condition precedent, to give validity to the transfer made in favour of the transferee. Section 8 of the Act of 1882 specifically provides that a transfer of property passes forthwith, to the transferee, all the interests, which the transferor is capable of passing in the property, including the legal incidents thereof and such incidents include the rents and profits thereof. Once the title of the assignee is complete, the attornment is automatic not dependent on the tenant's attorning or agreeing to the attornment. An identical question came up

for consideration in case of Mahendra Raghunath Das's case (JT 1997 (5) SC 363), wherein, it is ruled by the Supreme Court, which reads thus:

> "It is well settled that a transferee of a landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The Section does not require that the transfer of the right of the landlord could take effect only if the tenant attorns to him. Attornment by tenant is not necessary to confer the validity of the transfer of the landlord."

18. The aforesaid question also came up for consideration, before me, in case of Mohd. Hussain Vs. Yakoob, reported in 1997 (2) RCR 443, wherein, it is ruled that tenant has no legal justification to question oral gift. Giving notice to tenant by landlords regarding change in ownership is a mere technicality. It was held in the aforesaid case that question of title is foreign, in a suit for eviction by landlord against tenant, but in abundant caution, where such issues are found to be necessary, it can be raised incidentally. It was held that because the transferee is clothed with right to recover rent and eject lessee, no payment of rent or attornment to lessor is necessary. The decision cited by the learned counsel for the landlord plaintiff respondent, mentioned hereinabove, indicates towards the aforesaid conclusion. Thus, the question of attornment by landlord, is no more res integra."

So far as the next submissions of the learned counsel for the appellants about existence of relationship of landlord and tenant on alienation of property is concerned, I would like to refer the provisions of Sections 8 and 109 of the Transfer of

Property Act, 1882 and Section 116 of the Evidence Act, 1872. These Sections read as under –

> “8. Operation of transfer.- Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.”
>
> “109. Rights of lessor’s transferee.- If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:
>
> Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pay rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.
>
> The lessor, the transferee and the lessee may determine what proportion of the premium of rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.”
>
> “116. Estoppel of tenant; and of licensee of person in possession.- No

> tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

The above quoted provisions make it clear that attornment by a tenant is not a condition precedent to create a relationship of landlord and tenant between the transferee landlord and the existing tenant, and to give validity to the transfer. Section 109 of the Transfer of Property Act, 1882 does not require service of notice on the tenant, on alienation of property, to create relationship of landlord and tenant between transferee landlord and the existing tenant. Section 8 of the Transfer of Property Act specifically provides that a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Such incidents include the rents and profits thereof. Once the title of assignee is complete, the attornment is automatic, not dependent upon tenant’s attorning or agreeing to the attornment. This Court has already considered the question relating to relationship of landlord and tenant on transfer/alienation of rented

premises in the light of Sections 8 and 109 of the Transfer of Property Act, 1882, in the cases of Mohd. Hussain Vs. Yakoob, reported in 1997 (2) RCR 443, and Ram Saran Sharma Vs. Smt. Kamla Acharya – 2001 (2) RLR 136. This Court in Ram Saran Sharma's case (Supra) has also considered the judgment of the Hon'ble Supreme Court in the case of Mahendra Raghunath Das Vs. V. Bikaji – reported in JT 1997 (5) SC 363, and held as under:-

> "17. As regards the law of attornment, envisaged under Section 109 of the Act of 1882, it is held that Section 109 of the said Act does not require service of notice on the tenant, on alienation of property, to create relationship of landlord and tenant between the transferee landlord and the existing tenant. The transferee of the lessor steps into the shoes and possess all the rights, which the transferor has and the attornment is not a condition precedent, to give validity to the transfer made in favour of the transferee. Section 8 of the Act of 1882 specifically provides that a transfer of property passes forthwith, to the transferee, all the interests, which the transferor is capable of passing in the property, including the legal incidents thereof and such incidents include the rents and profits thereof. Once the title of the assignee is complete, the attornment is automatic not dependent on the tenant's attorning or agreeing to the attornment. An identical question came up for consideration in case of Mahendra Raghunath Das's case (JT 1997 (5) SC 363), wherein, it is ruled by the Supreme Court, which reads thus:
>
> "It is well settled that a transferee of a landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the

> subsisting tenancy. The Section does not require that the transfer of the right of the landlord could take effect only if the tenant attorns to him. Attornment by tenant is not necessary to confer the validity of the transfer of the landlord."
>
> 18. The aforesaid question also came up for consideration, before me, in case of Mohd. Hussain Vs. Yakoob, reported in 1997 (2) RCR 443, wherein, it is ruled that tenant has no legal justification to question oral gift. Giving notice to tenant by landlords regarding change in ownership is a mere technicality. It was held in the aforesaid case that question of title is foreign, in a suit for eviction by landlord against tenant, but in abundant caution, where such issues are found to be necessary, it can be raised incidentally. It was held that because the transferee is clothed with right to recover rent and eject lessee, no payment of rent or attornment to lessor is necessary. The decision cited by the learned counsel for the landlord plaintiff respondent, mentioned hereinabove, indicates towards the aforesaid conclusion. Thus, the question of attornment by landlord, is no more res integra."

Apart from above, it is also relevant to mention here that tenant-defendant Banne Singh (DW-1), in his cross-examination, has admitted that he had received a notice from Saubhagmal. Although, in view of Sections 8 and 109 of the Transfer of Property Act, 1882 there is no such requirement of service of notice, but, in the present case, a notice was also received by DW-1 Banne Singh from Saubhagmal. In these circumstances, I do not find any force in the contention of the learned counsel for the appellants and the same is rejected.

So far as two applications filed by appellant under Order 41 Rule 27, CPC, as referred above, are concerned, the same deserve to be dismissed. The sale-deed dated 7.5.2001 can not be taken on record for the reason that the suit was filed in January, 1980 for eviction of defendant-appellant which has been decided by both the courts below. The second appeal was filed in March, 2001, and only thereafter this document was got executed with ulterior motive and manipulation to defy the decree of eviction passed by two courts below which cannot be allowed in the facts and circumstances of the present case. The another application also deserves dismissal being mala-fide, highly belated and not maintainable in the facts and circumstances of the present case. Saubhagmal is not a party in the case, therefore, no direction can or could be issued to him to produce any document which is in his possession. Saubhagmal was examined in trial court on 23.7.1983 and 24.11.1983 as PW-2, and this application has been filed in this Court on 20.12.2006. Hence both the applications are dismissed.

This is tenant’s second appeal in a suit for eviction, which has been decreed by both the courts below. The controversial issues, that is Issues No.1 to 3 in the present case, are relating to question of facts and there is concurrent finding of facts by both the courts below, which cannot be interfered with by this

Court in second appeal under Section 100 of the Code of Civil Procedure. After amendment in Section 100 of the Code of Civil Procedure in the year 1976, a second appeal can only be admitted on the substantial question of law involved therein and after considering the submissions of learned counsel for both the parties in the light of findings of both the courts below, I do not find any substantial question of law involved in this appeal.

A three-Judges-Bench of the Hon'ble Supreme Court in **Bholaram v. Ameerchand – (1981) 2 SCC 414**, considered the effect of amendment made in Section 100 of the CPC in 1976, and held as under:-

> ".....The High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note. Even if we accept the main reason given by the High Court the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law."

The Hon'ble Supreme Court, in **Ramaswamy Kalingaryar v. Mathayan Padayachi – AIR 1992 SC 115**, while considering the scope of Section 100 C.P.C., held as under:-

> ".....Suggested shortcomings in the findings of fact recorded by the Courts below would not alter the situation that those were findings of facts, unquestionable, under the provisions of S.100, C.P.C., which defines the contours of the power of the High Court in second appeal. ....."

In **Madhavan Nair v. Bhaskar Pillai – (2005) 10 SCC 553**, the Hon'ble Supreme Court observed that the High Court was not justified in interfering with the concurrent findings of fact. The Hon'ble Supreme Court further observed that it is well settled that even if the first appellate court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

In **H.P. Pyarejan v. Dasappa – (2006) 2 SCC 496**, the Hon'ble Supreme Court observed that under Section 100 of the Code (as amended in 1976) the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing of substantial questions of law. Interference with the finding of fact by the High Court is not warranted if it invokes re-appreciation of evidence. The Hon'ble Apex Court found that the impugned judgment of the High Court was vulnerable and needed to be set aside.

The Hon'ble Supreme Court in **Gurdev Kaur & Others v. Kaki & Others – (2007) 1 SCC 546**, considered the true import, scope and ambit of Section 100 CPC by referring the Section 100 CPC, before and after amendment of 1976, various declarations of law by Privy Council and Supreme Court, Legislative background in the 54th Report of the Law Commission of India submitted in 1973, Historical

perspective, Rational behind permitting second appeal on substantial question of law, and held as under:-

> “60. The comprehensive Fifty-fourth Report of the Law Commission of India submitted to the Government of India in 1973 gives historical background regarding ambit and scope of Section 100 CPC. According to the said report, any rational system of administration of civil law should recognize that litigation in civil cases should have two hearings on facts – one by the trial court and one by the court of appeal.
>
> … … … … …
>
> 62. The question could perhaps be asked, why the litigant who wishes to have justice from the highest court of the State should be denied the opportunity to do so, at least where there is a flaw in the conclusion on facts reached by the trial court or by the court of first appeal. The answer is obvious that even litigants have to be protected against two persistent a pursuit of their goal of perfectly satisfactory justice. An unqualified right of first appeal may be necessary for the satisfaction of the defeated litigant; but a wide right of second appeal is more in the nature of a luxury.
>
> 63. The rational behind allowing a second appeal on a question of law is, that there ought to be some tribunal having jurisdiction that will enable it to maintain, and, where necessary, re-establish, uniformity throughout the State on important legal issues, so that within the area of the State, the law, insofar as it is not enacted law, should be laid down, or capable of being laid down, by one court whose rulings will be binding on all courts, tribunals and authorities within the area over which it has jurisdiction. This is implicit in any legal system where the higher courts have authority to make binding decisions on questions of law.

… … … … …

66. The primary cause of the accumulation of arrears of second appeals in the High Court is that laxity with which second appeals are admitted without serious scrutiny of the provisions of Section 100 CPC. It is the bounden duty of the High Court to entertain second appeal within the ambit and scope of Section 100 CPC.

… … … … …

73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous findings of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

… … … … …

81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallized by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned

judgment is set aside and this appeal is allowed with costs.”

In view of the above, I do not find any merit in any of the contentions of the learned counsel for the appellants and further I find that no substantial question of law is involved in this second appeal, therefore, the same is accordingly dismissed in limine. There shall be no order as to costs.

(Narendra Kumar Jain) J.

//Jaiman//